

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS E. McCracken, JR.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case. No. 13-12243

Hon. Lawrence P. Zatkoff

Magistrate Judge David R. Grand

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on June 12, 2014

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

Plaintiff filed this action challenging Defendant's denial of Plaintiff's application for Disability Insurance Benefits under the Social Security Act. This matter currently comes before the Court on the Magistrate Judge's Report and Recommendation [dkt. 16], in which the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment [dkt. 11] be denied, and Defendant's Motion for Summary Judgment [dkt. 14] be granted. Plaintiff filed an objection to the Magistrate Judge's Report and Recommendation [dkt. 17]. Defendant filed no response.

The Court has thoroughly reviewed the court file, the respective motions, the Report and Recommendation and Plaintiff's objections. For the reasons discussed below, the Court

ADOPTS the Magistrate Judge's Report and Recommendation. Plaintiff's Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED. The Court will, however, briefly address Plaintiff's objections.

II. LEGAL STANDARD

The Court examines an ALJ's decision to determine if the correct legal standard was used and if the findings are supported by substantial evidence. *Key v. Callahan*, 109 F.3d 270, 273 (6th Cir. 1997). The ALJ's decision "is not subject to reversal, even if there is substantial evidence in the record that would have supported an opposite conclusion, so long as substantial evidence supports the conclusion reached by the ALJ." *Id.* Substantial evidence is "more than a scintilla of evidence but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Brainard v. Sec'y of Health & Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989).

In determining whether the Commissioner's decision is supported by substantial evidence, the Court must examine the administrative record as a whole. *Cutlip v. Sec'y of Health & Human Servs.*, 25 F.3d 284, 286 (6th Cir. 1994) (per curiam). The Court may not try the case de novo, resolve conflicts in evidence, or decide questions of credibility. *Bass v. McMahon*, 499 F.3d 506, 509 (6th Cir. 2007). If the Commissioner's decision was supported by substantial evidence and decided under the correct legal standard, the Court must affirm the Commissioner's decision even if it may decide the case differently, and even if substantial evidence also supports the claimant's position. *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (en banc).

III. ANALYSIS

Plaintiff raises several disjointed objections to the Magistrate Judge's Report and Recommendation. The first line of objections Plaintiff presents deal with the ALJ's residual

functional capacity assessment. Plaintiff asserts that the ALJ failed, in creating his residual functional capacity assessment, to adequately account for the effects Plaintiff's concentration difficulties have on his ability to be productive during working hours. Next, Plaintiff asserts the ALJ's hypothetical question to the vocational expert failed to adequately describe these concentration difficulties. Finally, Plaintiff alleges the Magistrate Judge was incorrect in finding meritless Plaintiff's argument about the allowable time an employee can be off task.

It is clear to the Court that the Magistrate Judge and the ALJ satisfactorily considered all of Plaintiff's current objections prior to coming to their respective decisions. The Magistrate Judge's Report and Recommendation specifically addresses whether "the ALJ's [residual capacity finding], and the hypothetical question subsequently posed to the [vocation expert], failed to accurately portray [Plaintiff's] concentration-based limitations." Likewise, the Magistrate Judge's Report and Recommendation clearly analyzes—and dismisses as irrelevant—Plaintiff's argument concerning allowable off task time. It is clear to the Court that the Magistrate Judge did not ignore any of these varied objections in crafting his Report and Recommendation, that the ALJ used the correct legal standard in coming to his decision, and that substantial evidence exists in the record to support the ALJ's ruling.

IV. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that the Court ADOPTS the Magistrate Judge's Report and Recommendation [dkt. 16]. Plaintiff's Motion for Summary Judgment [dkt. 11] is DENIED and Defendant's Motion for Summary Judgment [dkt 14] is GRANTED.

IT IS SO ORDERED.

Date: June 12, 2014

S/Lawrence P. Zatkoff
HON. LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE